

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 477

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR FUTURE TEST PERIODS; PROVIDING FOR THE CONSIDERATION OF FUTURE TEST PERIODS AND CONSTRUCTION WORK IN PROGRESS IN DETERMINING RATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended by Laws 2005, Chapter 339, Section 2 and by Laws 2005, Chapter 341, Section 12) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries,

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 controls or is controlled by or is under common control with a
2 public utility. Control includes instances [~~where a person~~]
3 when:

4 (1) a person is an officer, director, partner,
5 trustee or person of similar status or function;

6 (2) a person owns directly or indirectly or
7 has a beneficial interest in ten percent or more of voting
8 securities of a person;

9 (3) a person has a level of ownership of
10 securities other than voting securities that the commission
11 establishes as creating a presumption of control; and

12 (4) [~~instances where~~] the possession of the
13 power to direct or cause the direction of the management and
14 policies of a person exists in fact, notwithstanding the lack
15 of ownership of ten percent or more of the person's voting
16 securities;

17 B. "commission" means the public regulation
18 commission;

19 C. "commissioner" means a member of the commission;

20 D. "municipality" means a municipal corporation
21 organized under the laws of the state, and H-class counties;

22 E. "person" means an individual, firm, partnership,
23 company, rural electric cooperative organized under Laws 1937,
24 Chapter 100 or the Rural Electric Cooperative Act, corporation
25 or lessee, trustee or receiver appointed by any court.

.176035.4

underscored material = new
[bracketed material] = delete

1 "Person" does not mean a class A county as described in Section
2 4-36-10 NMSA 1978 or a class B county as described in Section
3 4-36-8 NMSA 1978. "Person" does not mean a municipality as
4 defined in this section unless the municipality has elected to
5 come within the terms of the Public Utility Act as provided in
6 Section 62-6-5 NMSA 1978. In the absence of voluntary election
7 by a municipality to come within the provisions of the Public
8 Utility Act, the municipality shall be expressly excluded from
9 the operation of that act and from the operation of all its
10 provisions, and no such municipality shall for any purpose be
11 considered a public utility;

12 F. "securities" means stock, stock certificates,
13 bonds, notes, debentures, mortgages or deeds of trust or
14 similar evidences of indebtedness issued, executed or assumed
15 by a utility;

16 G. "public utility" or "utility" means every person
17 not engaged solely in interstate business and, except as stated
18 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
19 operate, lease or control:

20 (1) any plant, property or facility for the
21 generation, transmission or distribution, sale or furnishing to
22 or for the public of electricity for light, heat or power or
23 other uses;

24 (2) any plant, property or facility for the
25 manufacture, storage, distribution, sale or furnishing to or

.176035.4

underscoring material = new
[bracketed material] = delete

1 for the public of natural or manufactured gas or mixed or
2 liquefied petroleum gas for light, heat or power or other uses;
3 but ~~[the term]~~ "public utility" or "utility" shall not include
4 any plant, property or facility used for or in connection with
5 the business of the manufacture, storage, distribution, sale or
6 furnishing of liquefied petroleum gas in enclosed containers or
7 tank truck for use by others than consumers who receive their
8 supply through any pipeline system operating under municipal
9 authority or franchise and distributing to the public;

10 (3) any plant, property or facility for the
11 supplying, storage, distribution or furnishing to or for the
12 public of water for manufacturing, municipal, domestic or other
13 uses; provided, however, that nothing contained in this
14 paragraph shall be construed to apply to irrigation systems,
15 the chief or principal business of which is to supply water for
16 the purpose of irrigation;

17 (4) any plant, property or facility for the
18 production, transmission, conveyance, delivery or furnishing to
19 or for the public of steam for heat or power or other uses;

20 (5) any plant, property or facility for the
21 supplying and furnishing to or for the public of sanitary
22 sewers for transmission and disposal of sewage produced by
23 manufacturing, municipal, domestic or other uses; provided that
24 ~~[the terms]~~ "public utility" or "utility" as used in the Public
25 Utility Act ~~[do]~~ does not include any utility owned or operated

.176035.4

underscored material = new
[bracketed material] = delete

1 by a class A county as described in Section 4-36-10 NMSA 1978
2 either directly or through a corporation owned by or under
3 contract with such a county; or

4 (6) any plant, property or facility for the
5 sale or furnishing to or for the public of goods or services to
6 reduce the consumption of or demand for electricity or natural
7 gas, and is either a public utility under the definitions found
8 in [~~Paragraphs~~] Paragraph (1) or (2) of this subsection, or is
9 an alternative energy efficiency provider as described in
10 Section [~~7 of the Efficient Use of Energy Act~~] 62-17-7 NMSA
11 1978;

12 H. "rate" means every rate, tariff, charge or other
13 compensation for utility service rendered or to be rendered by
14 a utility and every rule, regulation, practice, act,
15 requirement or privilege in any way relating to such rate,
16 tariff, charge or other compensation and any schedule or tariff
17 or part of a schedule or tariff thereof;

18 I. "renewable energy" means electrical energy
19 generated by means of a low- or zero-emission generation
20 technology that has substantial long-term production potential
21 and may include, without limitation, the following energy
22 sources: solar, wind, hydropower, geothermal, landfill gas,
23 anaerobically digested waste biomass or fuel cells that are not
24 fossil fueled. "Renewable energy" does not include fossil fuel
25 or nuclear energy;

.176035.4

underscoring material = new
[bracketed material] = delete

1 J. "service" or "service regulation" means every
2 rule, regulation, practice, act or requirement relating to the
3 service or facility of a utility;

4 K. "Class I transaction" means the sale, lease or
5 provision of real property, water rights or other goods or
6 services by an affiliated interest to a public utility with
7 which it is affiliated or by a public utility to its affiliated
8 interest;

9 L. "Class II transaction" means:

10 (1) the formation after May 19, 1982 of a
11 corporate subsidiary by a public utility or a public utility
12 holding company by a public utility or its affiliated interest;

13 (2) the direct acquisition of the voting
14 securities or other direct ownership interests of a person by a
15 public utility if such acquisition would make the utility the
16 owner of ten percent or more of the voting securities or other
17 direct ownership interests of that person;

18 (3) the agreement by a public utility to
19 purchase securities or other ownership interest of a person
20 other than a nonprofit corporation, contribute additional
21 equity to, acquire additional equity interest in or pay or
22 guarantee any bonds, notes, debentures, deeds of trust or other
23 evidence of indebtedness of any such person; provided, however,
24 that a public utility may honor all agreements entered into by
25 such utility prior to May 19, 1982; or

.176035.4

underscored material = new
[bracketed material] = delete

1 (4) the divestiture by a public utility of any
2 affiliated interest that is a corporate subsidiary of the
3 public utility;

4 M. "corporate subsidiary" means any person ten
5 percent or more of whose voting securities or other ownership
6 interests are directly owned by a public utility;

7 N. "public utility holding company" means an
8 affiliated interest that controls a public utility through the
9 direct or indirect ownership of voting securities of that
10 public utility; [~~and~~]

11 O. "voting securities" means securities that carry
12 the present right to vote for the election of directors or
13 other members of the governing body ultimately responsible for
14 the management of the organization; and

15 P. "future test period" means a test period that is
16 determined on the basis of projected data for the twelve-month
17 period beginning on the date a proposed rate change is expected
18 to take effect."

19 Section 2. Section 62-6-14 NMSA 1978 (being Laws 1941,
20 Chapter 84, Section 26, as amended) is amended to read:

21 "62-6-14. VALUATION BY THE COMMISSION.--

22 A. When in the exercise of its powers and
23 jurisdiction it is necessary for the commission to consider or
24 ascertain the valuation of the properties or business of a
25 public utility, or make any other determination involved in the

.176035.4

underscored material = new
[bracketed material] = delete

1 fixing or setting of rates for a utility, the commission shall
2 give due consideration to the history and development of the
3 property and business of the particular public utility, to the
4 original cost thereof, to the cost of reproduction as a going
5 concern, to the revenues, investment and expenses of the
6 utility in this state and otherwise subject to the commission's
7 jurisdiction, to construction work in progress and to other
8 elements of value and rate-making formulae and methods
9 recognized by the laws of the land for rate-making purposes.

10 B. For the purpose of making such valuation or
11 determinations, the members of the commission and its duly
12 authorized agents and employees shall at all reasonable times
13 have free access to the property, accounts, records and
14 memoranda of the utility whose property and rights are being
15 valued, and the utility shall aid and cooperate with the
16 commission and its duly authorized agents and employees to the
17 fullest degree for the purpose of facilitating the
18 investigation.

19 C. In making any determination involving the rates
20 or service of a utility, the commission may change its past
21 practices or procedures, provided that substantial evidence on
22 the record justifies such a change.

23 D. In making a determination of just and reasonable
24 rates of a utility, the commission shall select a test period
25 that, on the basis of substantial evidence in the whole record,

.176035.4

underscored material = new
[bracketed material] = delete

1 the commission determines best reflects the conditions to be
2 experienced during the period when the rates determined by the
3 commission take effect. If a utility proposes a future test
4 period, a rebuttable presumption shall exist that a future test
5 period best reflects the conditions to be experienced during
6 the period when the rates determined by the commission take
7 effect.

8 E. To the extent that construction work in progress
9 is included in rate base, the commission shall determine
10 whether the income, if any, used in determining the utility's
11 revenue requirements shall include an allowance for funds used
12 during construction, considering the following factors:

13 (1) the magnitude of the construction work in
14 progress as a percentage of the rate base;

15 (2) the impact on cash flow and the utility's
16 capital costs;

17 (3) the effect on customer rates;

18 (4) whether the construction confers a present
19 benefit upon an identifiable class of customers;

20 (5) whether the construction is short-term in
21 nature or provides an imminent use in the provision of utility
22 service; and

23 (6) whether additional revenue will be
24 produced as a result of the construction work.

25 F. The commission shall include construction work

.176035.4

1 in progress in the rate base without including the associated
2 allowance for funds used during construction in income for
3 renewable energy and energy efficiency costs, costs associated
4 with smart-grid technologies, environmental improvement
5 projects and generation and transmission investments for which
6 the utility has obtained a certificate of public convenience
7 and necessity."

8 - 10 -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.176035.4

underscored material = new
[bracketed material] = delete